throughout the specification, for example, the Abstract, page 2, lines 28-39, page 4, lines 21-23, page 5, lines 11-15, and Examples 4, 6, and 7, at pages 11-15.

Upon entry of the present Amendment, claims 1-2, 4-6, and 8-12 will be pending in the application. A clean copy of the pending claims, as amended by the present Amendment and the Amendment filed on August 28, 2001, is submitted herewith as Appendix I.

2. A Corresponding Claim Was Already Pending in the Application.

Pursuant to 37 C.F.R. § 1.605(a), Applicants draw the Examiner's attention to claim 8, which was already pending in the application at the time the Examiner suggested the claim for purposes of an interference in the Office Action dated March 28, 2001. As set forth in the Petition filed on August 28, 2001, Applicants submit that claim 8, drawn to a method for obtaining a transgenic plant, is substantially the same as the claim the Examiner suggested for purposes of an interference.

In particular, method claim 8 is a multiple dependent claim utilizing for plant cell transformation any one of the vectors of claims 1, 2, 4, 5 or 6. As such, the incorporation of the vector of claim 2, which depends from claim 1, into the method of claim 8 provides a method for producing a transgenic plant that is substantially similar to the process claim suggested for purposes of an interference. Both claims include the production of a transgenic plant comprising the introduction into a plant cell of a T-DNA vector comprising (1) a gene of interest; (2) a right and left border T-DNA sequence on each end of the gene of interest; and (3) a non-T-DNA sequence encoding an RNAse molecule (e.g., barnase).

Notably, Applicants' claim 8 is broader than the claim suggested for interference, as barnase is just one example of a gene encoding a toxin gene that may be included in the vector of claim 2. Accordingly, depending upon the scope of the interference count, Applicants respectfully submit that claim 8 may be more appropriate than the suggested claim for designation as corresponding to a count in any interference that may be declared.

The One-Month Time Period for Presenting the Suggested Claim Should be Waived.

1. Applicants Were Unable to Present the Suggested Claim During the One-Month Period Due to Extraordinary Circumstances Beyond Their Control.

Applicants respectfully submit that the claim suggested for purposes of an interference could not have been added during the non-extendable one-month time period set in the Office Action of March 28, 2001 for the reasons set forth below. These reasons also were detailed in Applicants' Petition filed on August 28, 2001 and Applicants' Request for Reconsideration filed on June 7, 2002.

Applicants' opportunity to timely submit the suggested claim was foreclosed by extraordinary circumstances beyond Applicants' control. In particular, Applicants were disadvantaged in making a timely response during the one-month time period following the mailing of the Office Action dated March 28, 2001 because Applicants were undergoing a change in their representation before the U.S. Patent and Trademark Office during this critical time period. Due to this change in representation, Applicants' did not learn of the one-month deadline until after it already had expired. The amount of time required to transfer files and mail between representatives, and to enter Applicants' application and patent portfolio data into the new representative's docketing system exceeded the unusual and extremely short one-month time period provided for presenting the suggested claim.

Furthermore, Applicants note that time restraints for response to an Office Action are normally ascertained by identifying the mailing date of the document and examining requirements detailed on the first page. In contrast, notice of the one-month time period for presenting the suggested claim did not occur until the second page of the Office Action, the beginning of the substantive section of the document. Thus, the one-month time limit was effectively hidden, making it even more difficult for Applicants' representatives to identify and docket this time limit during the transfer of Applicants' files. Because the unusually short one-month time period was not readily identifiable in the Office Action, Applicants were further disadvantaged in their ability to submit a

timely reply while undergoing a change in representation before the Patent and Trademark Office.

In sum, Applicants should not be penalized for their misfortune in receiving an obscure notice of an unusual and extremely short response period while undergoing a change in representation accompanied by the usual complications in file transfer, etc. Accordingly, Applicants failure to present the suggested claim during the original one-month time period should be excused.

2. Applicants Acted Diligently Upon Learning of the One-Month Time Limit.

Upon learning of the one-month deadline, Applicants acted diligently in an attempt to remedy the failure to timely present the suggested claim. Applicants' representative promptly contacted and sought the advice of Examiners David Kruse and Michael Woodward. Based on these discussions with the Examiners, Applicants understood that the proper course of action was to petition for waiver of the one-month requirement and, once the petition was granted, to file an amendment entering the suggested claim. Accordingly, Applicants filed a Petition on August 28, 2001, followed by a Request for Reconsideration on June 7, 2002. Applicants ongoing understanding, after speaking with Examiners Kruse and Woodward, and later with Mr. Steven Brantley of the Petitions Office, was that submission of the suggested claim was barred until a petition had been granted waiving the one-month time limit. Thus, Applicants never submitted the suggested claim, as they understood that this was not possible because their Petition had not been granted.

Contrary to Applicants' understanding, the Decision issued on July 17, 2002 in response to Applicants' Request for Reconsideration implies that Applicants must file an amendment entering the suggested claim before the Patent and Trademark Office can take any further action to resolve this issue. Accordingly, Applicants now submit the present Amendment adding new claim12 corresponding to the suggested claim. Because extraordinary circumstances led to the failure to timely submit the suggested claim, and because Applicants have acted diligently in seeking to remedy this situation, Applicants respectfully request entry of the present Amendment.

CONCLUSION

Applicants acknowledge that ex parte prosecution of this application has been suspended for six months until October 16, 2002, as set forth in the Office Communication dated April 16, 2002. Based on the foregoing, Applicants respectfully request entry of the present Amendment and further and favorable consideration of the pending claims upon expiration of the stay in prosecution.

Applicants encourage the Examiner to contact the undersigned by telephone to resolve any questions and expedite allowance of this application.

No fees are believed to be due in connection with this Amendment. However, please apply any necessary charges or credits to Deposit Account No. 08-0219.

Respectfully submitted,

Date: 8/23/02

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Appendix I: Clean Set of Pending Claims

1. (Amended) A vector for plant transformation comprising a T-DNA sequence, the T-DNA sequence comprising a sequence located between two direct repeats, and a gene encoding a toxin gene and/or a nucleotide sequence that interferes with DNA unwinding.

2. (Amended) The vector according to claim 1, wherein the gene encoding a toxin gene is selected from the group consisting of an RNAse, a DNAse, a phytotoxin, a diphteria toxin, a protease, and an antisense sequence for a housekeeping gene, wherein the housekeeping gene is selected from the group consisting of an ATP synthase gene, a cytochrome c gene, a pyruvate kinase gene, an aminoacyl transferase gene, a phosphate translocator gene, a dicarboxylate translocator gene, dicarboxylate translocator gene, a 2-oxo-glutarate translocator gene.

4. (Amended) The vector according to claim 1, wherein the nucleotide sequence that interferes with DNA unwinding is a sequence which binds a DNA binding protein.

5. (Amended) The vector according to claim 4, wherein the sequence which binds DNA binding proteins is a vir box of the sequence 5' TNCAATTGAAAY 3' wherein N is any nucleotide and Y is a pyrimidine base nucleotide (T or C).

6. (Amended) The vector according to claim 1, wherein the sequence which interferes with DNA unwinding is a sequence of 20-60 basepairs with a GC-content of more than 80%.

8. (Amended) A method for obtaining a transgenic plant comprising transforming a plant cell with the vector of claim 1, 2, 4, 5 or 6, selecting a transformed cell, and producing a plant from the transformed cell.

9. (Amended) A plant host comprising the vector according to claim 1, 2, 4, 5, or 6.

10. (Amended) The host according to claim 9, wherein the host is a member of the Agrobacteriaceae.

11. (Amended) A method for the transformation of plants comprising transforming a plant cell with the vector of claim 1, 2, 4, 5 or 6 and selecting the transformed cell.

12. (New) A method for producing a transgenic plant containing a polynucleotide of interest, the method comprising:

(a) introducing into a plurality of plant cells a T-DNA vector comprising:

(i) a T-DNA sequence comprising a right border, a left border and the polynucleotide of interest positioned between the right and left border, and

(ii) a non-T-DNA sequence comprising a barnase polynucleotide sequence encoding a barnase enzyme, wherein said non-T-DNA sequence is located beyond the left T-DNA border;

(b) selecting a plant cell which comprises the T-DNA sequence and does not comprise the barnase polynucleotide sequence; and

(c) regenerating a transgenic plant from the selected plant.